

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ARCH SPECIALTY INSURANCE COMPANY,

Plaintiff,

MEMORANDUM & ORDER

19-CV-5920 (EK) (PK)

-against-

CANBERT INC.,

Defendant.

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ERIC KOMITEE, United States District Judge:

Arch Specialty Insurance Company commenced this action against Canbert Inc. on October 21, 2019. The complaint asserts breach of contract, "account stated," and unjust enrichment claims arising from an insurance contract between the parties. Although Plaintiff served the complaint, Defendant did not appear, and the Clerk of Court entered default on January 10, 2020. ECF No. 11. Plaintiff moved for default judgment on the breach of contract and account stated claims. ECF No. 12. Defendant later appeared, but did not move to vacate the entry of default, and on November 9, 2020, Defendant's counsel informed the Court that Canbert would not appear at the scheduled damages inquest because it was winding down its affairs. ECF Nos. 17-18.

On March 9, 2021, Magistrate Judge Peggy Kuo issued a Report and Recommendation (R&R) recommending that I grant the

motion for default judgment in part and deny it in part. ECF No. 21. Specifically, Judge Kuo recommends that I dismiss the account stated claim as duplicative of the breach of contract claim; dismiss the unjust enrichment claim as abandoned; and grant the breach of contract claim as to the additional premium, but not the New York State surplus lines tax and stamping fee. She further recommends the following damages award:

(1) \$94,396.00 in damages, (2) pre-judgment interest of \$23.28 per day from May 10, 2018 until the entry of judgment, (3) post-judgment interest at the rate set forth in 28 U.S.C. § 1961, and (4) \$440.00 in costs.

Neither party has filed objections and the time to do so has expired. Accordingly, the Court reviews the R&R for clear error on the face of the record. See Advisory Comm. Notes to Fed. R. Civ. P. 72(b); accord *Gesualdi v. Mack Excavation & Trailer Serv., Inc.*, No. 09-CV-2502, 2010 WL 985294, at *1 (E.D.N.Y. Mar. 15, 2010). Having reviewed the record, I find no clear error. I adopt the R&R in its entirety pursuant to 28 U.S.C. § 636(b)(1).

Therefore, Plaintiff's motion for default judgment is granted in part and denied in part. The motion is granted with respect to the breach of contract claim as to the additional premium, but not the New York State surplus lines tax and stamping fee, and denied with respect to the account stated

claim. In addition, Plaintiff's unjust enrichment claim is dismissed as abandoned. Plaintiff is awarded: (1) \$94,396.00 in damages; (2) pre-judgment interest of \$23.28 per day from May 10, 2018 until the entry of judgment; (3) post-judgment interest at the rate set forth in 28 U.S.C. § 1961; and (4) \$440.00 in costs.

The Clerk of Court is respectfully directed to enter judgment and close the case.

SO ORDERED.

/s Eric Komitee
ERIC KOMITEE
United States District Judge

Dated: March 30, 2021
Brooklyn, New York